of the trial court has been reversed by an appellate court and the cause remanded for judicial determination. *North* v. *Nicholas,* 39 Conn. 355; *City of Chicago* v. *Wolf,* 86 Ill. App. 286; *City of Winona* v. *Minn. Ry. Con. Co.,* 29 Minn. 68, 11 N. W. 228; *Smith* v. *Savin,* 141 N. Y. 315, 36 N. E. 338; *Gilliam* v. *Brown,* 126 Cal. 160, 58 Pac. 466. But this is because the trial must necessarily be de novo. However, see the case of *Hatch* v. *Bank,* 72 N. Y. 487, in which, after satisfaction of the judgment in favor of the plaintiff, it was held to be within the discretion of the court to vacate it and amend the complaint by adding new causes of action. See also *Crookes* v. *Maxwell,* 6 Blatch. (U. S.) 468, Fed. Cas. No. 3415. But these are extreme cases. The plaintiff has also been allowed to amend his pleadings pending an appeal, in a case where judgment was rendered for the plaintiff and the defendant had appealed. *Reeside* v. *Hadden,* 12 Pa. (2 Jones) 243; *Higgins* v. *People,* 2 Colo. App. 567, 39 Pac. 951. *Contra, Winburn* v. *Fidelity Loan and Building Assn.,* 110 Ia. 374, 81 N. W. 682. For an exhaustive review of the cases relating to amendments at late stages of the proceedings, see 6 CURRENT LAW, 1039.

PUBLIC OFFICERS—OFFICER DE FACTO WHEN STATUTE CREATING OFFICE UNCONSTITUTIONAL.—Relator had been a police officer of the city of Bayonne, appointed by competent authority. Later a new police board was appointed under an act of the legislature, and this board removed relator from his office. The legislation creating this new board was afterwards held to be unconstitutional, and relator asks mandamus against the board which the new board superseded to compel his reinstatement. The defense was that the new board was a *de facto* body, and that its acts before the statute was declared unconstitutional were valid. *Held,* that the writ should not issue. *Lang* v. *Mayor, etc., of Bayonne* (1907), — N. J. L. —, 68 Atl. Rep. 90.

The question here involved has given rise to much conflict of opinion. In the leading case of *Norton* v. *Shelby County,* 118 U. S. 425, it was held that an office attempted to be created by an unconstitutional statute could not be regarded as a *de facto* office, and this case has been followed by several, some of which are cited in the principal case. See *Gorman* v. *People,* 17 Colo. 596, 31 Am. St. Rep. 350; *In re Norton,* 64 Kan. 842, 68 Pac. 639, 91 Am. St. Rep. 255; *Ex parte Snyder,* 64 Mo. 58; *Flaucher* v. *Camden,* 56 N. J. L. 244, 28 Atl. 82 (overruled by the principal case). The leading case to the contrary (though it is not mentioned in the principal case) is probably *State* v. *Gardner,* 54 Ohio St. 24, 31 L. R. A. 660. The opinion of SPEAR, J., in this case contains a full citation of the cases, and no one can read it without being convinced that the statements of *Norton* v. *Shelby County* require some qualification.

PUBLIC OFFICERS — REMOVAL — TEMPORARY SUSPENSION — LEGISLATIVE POWER.—The Texas Constitution (Art. 5, §§ 15 and 24) fixes the tenure of office for county judges at two years, and provides for their removal for cause in a definite manner. *Held,* that a statute providing for their temporary suspension in a different manner (Rev. St. 1895, Art. 3550), but incident to

and during regular proceedings for removal is valid. *Griner* v. *Thomas, District Judge* (1907), 104 S. W. Rep. 1058.

In the absence of constitutional restrictions, the power of the legislature to provide for removals or suspensions from public office is of course absolute. It is also settled that where the constitution provides affirmatively for removals in a particular manner, any statute changing that method is unconstitutional. The question is therefore narrowed to this: Is the power of suspension included in the power of removal? Two cases at least (*Shannon* v. *Portsmouth,* 54 N. H. 183; *State* v. *Lingo,* 26 Mo. 496) hold that the power to suspend from office is impliedly given when the power to remove is given, from which it would seem to follow that if the power of removal except in a specified manner is withheld, the power to suspend is also withheld. Thus *Lowe* v. *Commonwealth,* 3 Metc. (Ky.) 237, held that a statute authorizing suspension "for such period as it may deem right" void as contravening a constitutional provision authorizing removals in a specified manner. *Gregory* v. *Mayor,* 113 N. Y. 416, ably upholds the view that the power to suspend is not included in the power to remove. "The power to remove is the power to cause a vacancy in the position held by the person removed, which may be filled at once. * * * The power to suspend causes no vacancy and gives no occasion for the exercise of the power to fill one. The result is that there may be an office, an officer and a vacancy, and yet no one to discharge the duties of the office." The inherent difference between suspension and removal is upheld in *State* v. *Jersey City,* 25 N. J. L. 536; *Poe* v. *State,* 72 Texas 625, and is cited by MECHEM, PUB. OFFICERS, § 453, as the better rule. Granted the distinction between suspension and removal, it is easy to see that a constitutional provision against removals does not fetter the legislature as to suspensions, at least as the court is cautious to add, when the suspension is "temporary and incidental to the trial of a legal and valid proceeding to remove."

SALES—CONDITIONAL SALES—WAIVER OF DELIVERY—LOSS BY FIRE.—The defendant purchased certain machinery from the Acme Machine Works, paying for it part in cash and the remainder in notes. It was stipulated that the title should remain in the vendor until the purchase price was paid. The greater part of the machinery was delivered, but a certain kiln was, by the vendee's request, kept in the possession of the vendor, to be delivered at such time as the vendee might designate. The kiln was burned without the fault of the vendor. Both the vendor and vendee became insolvent, and the plaintiff herein as a creditor brought the action, as provided by statute, to wind up the affairs of the defendant company. The receiver appointed to take charge of the defendant company sought to have the value of this kiln, which was $750, credited on the notes given for the purchase price of the machinery. *Held,* where in a sale of machinery, title to remain in the vendor until paid for, the vendee executed notes for the price, it was liable thereon though the machinery was subsequently destroyed by fire. *Whitlock* v. *Auburn Lumber Co.* (1907), — N. C. —, 58 S. E. Rep. 909.

The point involved in the principal case is one on which the courts are in